

### **REMARKS/ARGUMENTS**

In the Office action, independent claims 1 and 11 are rejected under 35 U.S.C. § 102(e) as being anticipated by Tu (U.S. Patent No. 6,602,427). It is the examiner's position that Tu discloses "performing certain process steps from the top side of a substrate carrying a plurality of devices, at least certain of the devices having a micro-machined mesh (figs. 4-10)." It is respectfully submitted that the examiner has misconstrued the teachings of Tu.

Tu discloses a micro-machined optical mechanical modulator. There is a membrane formed in Figs. 4-10 of Tu. That membrane is suspended above the substrate by four Z-shaped legs extending outwardly from the central square area and defining four openings 414 between the legs. See column 7, lines 4-6. It is respectfully submitted that a person of ordinary skill in the art would not understand such a structure to be a mesh. In support of that position, applicants submit the declaration of Kaigham J. Gabriel. As seen from Dr. Gabriel's declaration, Dr. Gabriel is at least a person of ordinary skill in the art. As set forth in paragraph 15 of the declaration, there is nothing in Figs. 4-10 of the '427 patent that teaches the fabrication of a mesh. As stated in paragraph 16 of the declaration, a person of ordinary skill in the art, upon examining Figs. 4-10 of the '427 patent, would not conclude that the openings 414 between supporting Z-shaped legs turn the membrane into a mesh. Because virtually every MEMS device is suspended above the substrate by one or more arms, legs, or beams, if the examiner's position was correct, then virtually every MEMS device would be a mesh. That is obviously not the case. It is respectfully submitted that when the Tu reference is limited to what it actually discloses, namely the fabrication of a micro-machined optical mechanical modulator, that it is clear that the § 102 rejection of independent claims 1 and 11 must be withdrawn.

In paragraph 5 of the Office action, claims 7-10 and 12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 12 and 28 of U.S. Patent No. 6,936,524. A terminal disclaimer will be provided after the art rejection has been overcome.

Also enclosed is an Information Disclosure Statement. The Information Disclosure Statement discloses documents identified in a European Search Report. A copy of the European Search Report is also enclosed for the examiner's convenience. It is respectfully submitted that

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the art cited by the European Patent Office is merely cumulative and has not been shown to disclose or suggest thinning of a substrate in conjunction with devices having micro-machined meshes, and subsequently releasing the micro-machined meshes.

Applicants have made a diligent effort to place the instant application in condition for allowance. If the examiner is of the opinion that the instant application is in condition for disposition other than through allowance, the examiner is requested to contact applicants' attorney at the telephone number below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'E. L. Pencoske', written over a horizontal line.

Edward L. Pencoske  
Reg. No. 29,688  
Jones Day  
One Mellon Center  
500 Grant Street, Suite 3100  
Pittsburgh, PA, USA, 15219  
(412) 394-9531  
(412) 394-7959 (Fax)  
Attorneys for Applicants